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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,599	02/08/2002	Akikazu Yoshikawa	AA-542	2691

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EXAMINER

LAMM, MARINA

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 05/14/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/071,599

Applicant(s)

YOSHIKAWA ET AL.

Examiner

Marina Lamm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Claims 1-20 are pending in this application filed 02/08/02 which is a continuation of PCT/US01/04070 filed 02/08/01.

#### *Election/Restrictions*

1. Acknowledgment is made of the Response to Election Requirement filed 2/13/03.

Applicant elected, with traverse, the following species: water as a solvent, aluminum sulfate as aluminum ion, polyquaternium polymers as film-forming polymers, nonionic surfactants as wetting agents and zinc ion as additional metal ions (additional allergen denaturing compounds). The traversal is on the grounds that “[t]he Applicants should not be subjected to requirements for the election of species that includes each of the components of the claimed composition, particularly when the separate substances and compounds are, in some cases (e.g. different types of wetting agents), not even claimed.” (emphasis in original). In response, it is noted that the election of species requirement will be applied only to those claims that recite the component that was subject to the election requirement. For example, Claims 1-5, 10, 11, 18 and 19 will be examined as claiming sprayable compositions containing aluminum sulfate (but not as aluminum sulfate in combination with polyquaternium polymers, nonionic surfactants, and zinc ion).

2. Claims readable on the elected species are 1-15 and 18-20. Claims 16 and 17 are withdrawn from consideration as directed to non-elected species.

#### *Claim Objections*

3. Claim 6 is objected to because of the following informalities: the recitation “(“PVP”)” is redundant. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, 10, 11, 15, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Moore, Jr. (US 5,865,143).

Moore, Jr. teaches sprayable aqueous compositions containing 1-50% of aluminum sulfate. See Abstract. With respect to Claims 3-5, the compositions of Moore, Jr. are free from aluminum chlorohydrate. The compositions of Moore, Jr. will inherently neutralize at least 50% or 60% of allergen containing proteins because they contain the same ingredient in the same amounts as claimed in the instant invention.

Thus, Moore, Jr. teaches each and every limitation of Claims 1-5, 10, 11, 15, 18 and 19.

6. Claims 1-5, 10-12, 15, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al. (US 4,331,653).

Brown et al. teach aerosol compositions containing 0.5-25% of an acidic metallic salt such as aluminum sulfate and aluminum potassium sulfate. See Claims 16-18; Examples I and II. The compositions of Brown et al. also contain nonionic emulsifiers such as polyoxyethylene derivatives of stearic acid. See col. 4, lines 14-21. The exemplified compositions are free from aluminum chlorohydrate as required by Claims 3-5. See Examples I and II. The compositions of Brown et al. will inherently neutralize at least 50% or 60% of allergen containing proteins

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because they contain the same ingredient in the same amounts as claimed in the instant invention.

Thus, Brown et al. teach each and every limitation of Claims 1-5, 10-12, 15, 18 and 19.

7. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al. and evidenced by Green (US 4,806,526).

Brown et al. teach aerosol compositions containing aluminum sulfate or aluminum potassium sulfate as discussed above. The compositions of Brown et al. may contain conventional antiseptics such as alcohol compounds. See col. 6, lines 1-2. Green teaches that alcohols such as ethanol and benzyl alcohol are effective miticides. See col. 2, lines 10-11.

Thus, Brown et al. teach each and every limitation of Claim 20.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 9, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al.

Brown et al. applied as above. The reference teaches that suitable acidic metallic salts include zinc, aluminum and iron salts. See col. 5, lines 1-2. Further, the reference teaches that "[c]ombinations of salts may also be employed." See col. 4, lines 8-9. Brown et al. do not

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explicitly teach the claimed combination of aluminum sulfate and zinc ions. However, the reference clearly encompasses such combination. See above. Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to use a combination of aluminum sulfate and a zinc salt in compositions of Brown et al. with a reasonable expectation of beneficial results such as improved styptic properties of the composition.

10. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. in view of Stewart (US 5,916,541).

Brown et al. applied as above. The reference does not teach polyquaternium film forming polymers of the instant claims. However, it is known in the art of topical compositions to employ the claimed polyquaternium polymers as film forming polymers. See, for example, Stewart at col. 5, line 50-col. 6, line 28. Film formers provide waterproofing and stay-on properties to the compositions. See col. 5, lines 50-52. One of ordinary skill would have been motivated to employ polyquaternium film forming polymers of Stewart for the topical compositions of Brown et al. with a reasonable expectation of beneficial results such as improved adherence to the skin and waterproofing properties of the compositions.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. GB 2 329 586 teaches sprayable allergen deactivating compositions containing a

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deactivating effective amount of one or more deactivants including aluminum chlorohydrate, polyquaternium-10 and PVP.


12. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541.

The examiner can normally be reached on Monday to Friday from 9 to 5.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



Marina Lamm  
Patent Examiner AU 1616  
5/13/03